Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Application by Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), and Verizon Global Networks, Inc., for Authorization to Provide In-region, InterLATA Services in Massachusetts	)	CC Docket No. 00-176

COMMENTS OF THE

COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

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SUMMARY

Verizon has violated the Commission's "complete as filed" rule, through its October 13, 2000, filing. Since the Commission has repeatedly held that an applicant may not, during the pendency of its application, supplement its application by submitting new factual evidence this filing should not be considered. Without this filing, however, Verizon's application clearly fails. The Commission should therefore dismiss the application without prejudice to renew once this issue has been satisfactorily vetted.

Verizon repeatedly claims in its application that its performance in Massachusetts is similar to the performance it provided in New York. Although CompTel agrees that Verizon should demonstrate performance that is *at least* as good as that previously shown by Verizon (then Bell Atlantic) in New York, Verizon's attempted comparison is unflattering in three significant respects.

First, the effective prices for unbundled network elements ("UNEs") in Massachusetts exceed the prices for identical UNEs in New York, and violate the pricing standard of Section 252. The presence of these excessive prices is hindering the development of full competition in Massachusetts. Even considering Verizon's "13th hour" price reduction proposed only three days ago, Verizon has not satisfied its obligation in item two of section 271's competitive checklist to demonstrate that its UNE prices meet Section 252's cost standards.

Second, BOCs pose a threat to fair competition in all interLATA service markets – both voice and data - once they receive 271 authority, since they will still dominate the local access market and can discriminate in favor of their own affiliate. Competitive carriers in New

York have been facing lengthy delays in obtaining special access circuits for over a year now. While this poor performance raises serious questions about Verizon's ability to provision wholesale and special access services simultaneously, it also raises a serious questions about the competitive impact of this performance. Presently, there is no way to be sure that Verizon's special access delays will not be used to the competitive advantage of Verizon's Section 272 affiliate, because no reporting requirement exists to measure whether the poor performance competitive carriers are receiving is also being borne by Verizon's long distance affiliate. To guard against discrimination, the Commission must require Verizon and all other 271 entrants to report special access performance – using performance metrics similar to those that Verizon just agreed to report for backbone provider Genuity – as a condition to receipt of Section 271 authority.

Third, unlike New York, Verizon has been unable to provision interconnection trunks in the quantities forecasted and requested by competitive carriers. Until Verizon can demonstrate its ability to provision interconnection trunks as requested, it cannot satisfy the Section 271 checklist.

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THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel") by its attorneys, hereby submits these comments in response to the Commission's *Public Notice* in the above-captioned proceeding.[1] The Public Notice invites interested parties to comment on the Application of Verizon New England, Inc., *et al.* ("Verizon") to provide in-region interLATA services in the Commonwealth of Massachusetts, pursuant to section 271 of the Communications Act of 1934, as amended.

I. INTRODUCTION

Verizon has violated the Commission's "complete as filed" rule, through its October 13, 2000, rate filing.[2] Since the Commission has repeatedly held that "[a]n applicant may not, at any time during the pendency of its application, supplement its application by submitting new factual evidence that is not directly responsive to arguments raised by parties

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1 *Public Notice*, Comments Requested on the Application by Verizon New England Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Massachusetts, DA 00-2159 (Sept. 22, 2000).

2 Letter from Gordon R. Evans, Verizon VP Federal Regulatory, to Hon. Magalie R. Salas, Secretary, Federal Communications Commission.

commenting on its application,"[3] this filing should not be considered. Without this filing, however, Verizon's application clearly fails. The Commission should therefore dismiss the application without prejudice to renew once this issue has been satisfactorily vetted.

Verizon repeatedly claims in its application that its performance in Massachusetts is similar to the performance it provided in New York. Although CompTel agrees that Verizon should demonstrate performance that is *at least* as good as that previously shown by Verizon (then Bell Atlantic) in New York, Verizon's attempted comparison is unflattering in three significant respects.

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Second, BOCs pose a threat to fair competition in all interLATA service markets – both voice and data - once they receive 271 authority, since they will still dominate the local access market and can discriminate in favor of their own affiliate. Competitive carriers in New

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3 *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, 15 FCC Rcd 3953, ¶ 34 (1999)("*New York 271 Order*"), *aff'd, AT&T v. FCC*, 220 F.3d 607 (D.C. Cir. 2000), *citing Application by Ameritech Michigan Pursuant to Section 271 of the Communications Act, as amended, To Provide In-Region, InterLATA Service in Michigan*, CC Docket No. 97-137, 12 FCC Rcd 20543 (1997)("*Michigan 271 Order*").

4 47 U.S.C. §271(c)(2)(B)(ii).

York have been facing lengthy delays in obtaining special access circuits for over a year now. While this poor performance raises serious questions about Verizon's ability to provision wholesale and special access services simultaneously, it also raises serious questions about the competitive impact of this performance. Presently, there is no way to be sure that Verizon's special access delays will not be used to the competitive advantage of Verizon's Section 272 affiliate, because no reporting requirement exists to measure whether the poor performance competitive carriers are receiving is also being borne by Verizon's long distance affiliate. To guard against discrimination, the Commission must require Verizon and all other 271 entrants to report special access performance – using performance metrics similar to those that Verizon just agreed to report for backbone provider Genuity[5] – as a condition to receipt of Section 271 authority.

Third, unlike New York, Verizon has been unable to provision interconnection trunks in the quantities forecasted and requested by competitive carriers. Until Verizon can demonstrate its ability to provision interconnection trunks as requested, it cannot satisfy Section 271's standards.

II. VERIZON HAS VIOLATED THE COMMISSION'S "COMPLETE AS FILED RULE"

The Commission has repeatedly stated its expectation that each "271 application, as originally filed, will include all of the factual evidence on which the applicant would have the Commission rely in making its findings."[6] Through its October 13, 2000 filing, Verizon has

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5 *In re Application of GTE CORPORATION, Transferor, and BELL ATLANTIC CORPORATION, Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License*, CC Docket No. 98-184, Memorandum Opinion and Order, FCC 00-221 (rel. June 16, 2000) (*"BA/GTE Merger Order"*).

6 *New York 271 Order* at ¶ 34.

clearly violated what has become known as the Commission's "complete as filed" rule. The application should therefore be rejected on that ground or, at the very least, dismissed without prejudice.[7]

In its October 13, 2000, transmittal letter to the Massachusetts DTE, Verizon unabashedly states that it is "proposing these [rate] reductions to eliminate pricing issues . . . in its Section 271 application now pending before the FCC." By this statement, Verizon is making two admissions. First, Verizon is tacitly admitting that the prices contained in its application are not in compliance with section 271 of the Act, and must be changed before the company can obtain interLATA relief. In addition, Verizon is essentially pleading guilty to a violation of the well-established "complete as filed" rule since its stated intent is "to eliminate [an issue]" relating to an important aspect of the 271 application already pending at the FCC. Since it is the BOCs and not the CLECs that control the timing of 271 applications, the Commission should continue to "ensure that commenters are not faced with a 'moving target'"[8] in the 271 process and dismiss Verizon's application as "incomplete as filed."

By unilaterally announcing new prices for UNEs, Verizon has finally attempted to address an issue that CLECs had been raising for some time. Seven months ago, for example, AT&T Communications of New England petitioned the Massachusetts DTE to review the very rates now addressed by Verizon. Thus, Verizon has known that this would be a contentious issue

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7 The Commission has also said in the past that it "retain[s] the discretion to start the 90-day review process anew or to accord such evidence no weight." *Id.* In that same Order, at paragraph 35, the Commission went on to say that it is "highly disruptive" to have a record that is "constantly evolving." CompTel wholeheartedly agrees.

8 *New York 271 Order* at ¶ 35.

in any §271 filing, and has now attempted to address it without any opportunity for substantive comment by the parties affected.[9]

Verizon's new tariff filing, received by the undersigned counsel today, ostensibly changes prices for various UNEs and reduces reciprocal compensation rates. The effect of this filing is not clear. Since the Massachusetts DTE has already declined the opportunity to review Verizon's rates, it is not known whether these rates will actually go into effect, and if they do, for how long they will remain effective. In other words, these are not permanent rates, and are not even interim rates; Verizon does not even have a "concrete and specific obligation" to provide UNEs at these rates at this point. Verizon should voluntarily withdraw and re-file its §271 application, together with appropriate affidavits explaining what its October 13, 2000, filing actually does, and does not do. All parties and, more importantly, the Commission, will then be in a position to gauge the extent to which Verizon has complied with the Section 271 checklist.

III. VERIZON'S APPLICATION FAILS TO SATISFY CHECKLIST ITEM TWO

Item two of the competitive checklist requires Verizon to demonstrate that it provides "nondiscriminatory access to network elements in accordance with the requirements of section 251(c)(3) and 252(d)(1)" of the Act.[10] The pricing prong of checklist item two requires a BOC to demonstrate that it provides UNEs in accordance with section 252(d)(1) of the Act.[11] Pursuant to section 252(d)(1), determinations by a state commission of just and reasonable rates

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9 CompTel would note that while it is in favor of lower UNE rates, it believes that this is not the proper time or forum for exploration of rate issues.

10 47 U.S.C. § 271(c)(2)(B)(ii).

11 47 U.S.C. §§ 271(c)(2)(B)(ii), 252(d)(1).

for network elements shall be "based on the cost ... of providing ... the network element ... and nondiscriminatory, and may include a reasonable profit."[12] In accordance with its statutory authority, the Commission has adopted the Total Element Long Run Incremental Cost ("TELRIC") pricing methodology that state commissions must utilize in setting the rates for UNEs.

In the section 271 context, "a BOC must show that its prices for interconnection and unbundled network elements are based on forward-looking, long-run incremental costs" in order to demonstrate compliance with checklist item ii.[13] As demonstrated below, however, Verizon has failed to make this showing in its application.[14]

A. Verizon's UNE Rates In Massachusetts Do Not Satisfy The Cost-Based Pricing Prong of Checklist Item Two

To demonstrate compliance with checklist item two, Verizon relies on the fact that it provides UNEs in Massachusetts "using substantially the same processes and procedures that it uses in New York, . . . which the Commission found satisfy the requirements of the Act."[15] While there is some consistency between Massachusetts and New York regarding UNE provisioning, the same does not hold true for UNE pricing.[16] Indeed, whereas the UNE rates in

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12 47 U.S.C. § 252(d)(1).

13 *New York 271 Order*, ¶ 237.

14 As noted earlier, Verizon has just served a tariff filing which appears to contain significantly lower rates for several UNE elements. Since the nature and true effect of this filing is far from clear, this filing will focus on the rates contained in the Verizon application.

15 Verizon Brief at p16.

16 While the usage sensitive charge related to unbundled local switching ("ULS") are the most egregiously overpriced UNE-P component in Massachusetts, CompTel notes that other UNE items, including switch ports, are also priced at excessively.

New York have made mass market competition possible, the UNE rates in Massachusetts have foreclosed mass market competition.[17]

As noted in the *New York 271 Order*, the Commission will reject an application on pricing grounds "if basic TELRIC principles are violated or the state commission makes clear errors in factual finding on matters so substantial that the end result falls outside the range that the reasonable application of TELRIC principles would produce."[18]

The Massachusetts DTE is aware that a number of parties believe that the existing ULS rates are excessive. The DTE has, however, declined to re-open a cost proceeding to examine these rates. On March 13, 2000, AT&T filed a petition with the DTE asking that it review and reduce a series of UNE related charges. CompTel, the Commonwealth of Massachusetts Office of the Attorney General, and others supported the AT&T petition. However, the DTE refused to consider it as part of the section 271 proceeding or to docket those issues in a separate proceeding.[19]

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17 If similarities with New York result in a presumption of compliance with the competitive checklist in Massachusetts, then material differences with New York should result in a presumption that Verizon has failed to comply with the checklist in Massachusetts. Although Verizon's procedures, policies, and OSS for providing the UNE-P in Massachusetts may be essentially similar to New York, the rates for the UNE-P are materially higher in Massachusetts. These rates are so much higher, in fact, that the Commission should reject Verizon's application.

18 *New York 271 Order at* ¶ 244 (1999). CompTel notes that arguments regarding the exact status of the Commission's TELRIC standard are irrelevant with respect to ULS. The existing debate surrounding TELRIC relates to the Commission's requirement that the most efficient technology will be adopted by incumbents. This has had no impact on ULS, as circuit switching is ubiquitously deployed by incumbents at present, and the rates set for ULS are based on costs that incumbents allege they already incur or have incurred in the past. Of course, substantial debate continues to exist as to whether incumbents, including Verizon, have made state commissions aware in cost proceedings of the substantial switch discounts they receive from vendors.

19 *See* Verizon Brief at 68.

In the *Texas 271 Order*, the Commission declined to take action on numerous SWBT rates on grounds that those rates were interim and the Texas Commission was in the process of conducting a rate case.[20] There, the Commission stated:

> [W]e are reluctant to deny a section 271 application because a BOC is engaged in an unresolved rate dispute with its competitors and the relevant state commission, which has primary jurisdiction over the matter, is currently considering the matter. Instead, as we have explained, interim rate solutions are a sufficient basis for granting a 271 application when an interim solution to a particular rate dispute is reasonable under the circumstances, the state commission has demonstrated its commitment to our pricing rules, and provision is made for refunds or true-ups once permanent rates are set.[21]

The facts and circumstances in the instant application do not meet this standard.

The existing UNE rates in Massachusetts are substantially higher than the FCC proxy, and therefore fall "outside of the range that the reasonable application of TELRIC principles would produce."[22] The Massachusetts DTE has declined to adjust Verizon's rates to fall within the Commission's default proxies or to open a cost docket to review these rates in response to a reasonable AT&T petition. No interim rates for the items cited by AT&T are pending subject to true up, and the DTE has no stated plans to convene a cost proceeding.[23] Furthermore, because the DTE's existing rates are substantially higher than the Commission's

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20 *Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant To Section 271 Of The Telecommunications Act Of 1996 To Provide In-Region, InterLATA Services In Texas*, Memorandum Opinion and Order, CC Docket No 00-65, FCC 00-238, ¶¶ 234-239 (rel. June 30, 2000) ("*Texas 271 Order*"). *See also, New York 271 Order*, ¶ 259.

21 *Texas 271 Order*, ¶ 236.

22 *First Report and Order*, ¶ 812.

23 The DTE has not, in fact, conducted a true all-party rate proceeding. The rates were not determined in a generic cost docket, as those in New York were, but resulted instead from a consolidated proceeding to arbitrate several discrete interconnection agreements.

proxies and because the DTE has declined to act on AT&T's petition to set TELRIC-based rates, the DTE's commitment to the Commission's pricing standard is unclear.

For these reasons, the Commission may – and should – act to ensure that Verizon is providing UNEs at rates consistent with TELRIC prior to any grant of section 271 authority in Massachusetts. Any other result would sanction Verizon's entry into the in-region, long distance markets before the Massachusetts local exchange market is open to competition. The Commission should deny Verizon's Application to provide in-region, interLATA services in Massachusetts until such time as the exceedingly high UNE rates are appropriately addressed.

IV. THE COMMISSION MUST ADOPT PERFORMANCE MEASUREMENTS FOR VERIZON'S SECTION 272 AFFILIATE.

In previous Section 271 orders, the Commission has focused on mechanisms to ensure that RBOCs do not discriminate in favor of their own retail local services or their separate affiliates for data services.[24] This Application now provides an excellent opportunity for the Commission to consider the potential for preferential treatment in the provisioning of special access services used by Verizon's Section 272 affiliate and competitors alike. As discussed below, Verizon's special access provisioning has been well below acceptable levels in New York since late 1999. While this level of performance for competitive carriers is disturbing in and of itself, the lack of comparative data makes it impossible to determine whether Verizon's affiliate is receiving preferential treatment or whether Verizon is simply unable to provision an acceptable level of service in both the local wholesale and special access markets simultaneously. In order to illuminate this critical issue, CompTel urges the Commission to

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[24] *See, for example, the New York §271 Order* at ¶ 429 ("these [performance assurance] mechanisms can serve as critical complements to the Commission's authority to preserve checklist compliance pursuant to 271(d)(6)"); and *BA/GTE Merger Order* at ¶ 330.

require that the special access performance metrics already used for measuring Verizon's treatment of Genuity be used for Verizon's Section 272 affiliate as well. This additional reporting requirement would not be burdensome, and would provide competitive carriers with a means to judge whether Verizon's Section 272 affiliate is operating within the statutory requirements.[25]

The importance of the ability of carriers to judge the performance they are receiving on a comparative basis was highlighted by the Commission in *the New York 271 Order*. The Commission stated therein that, "to the extent that parties are experiencing delays in the provisioning of special access services ordered from Bell Atlantic's federal tariffs, we note that these issues are appropriately addressed in the Commission's section 208 complaint process."[26] Without clear reporting requirements, and comparative data, it is difficult for carriers to avail themselves of the 208 complaint process to which they have been referred.

The potential for an RBOC's corporate self-interest to result in discriminatory conduct is beyond dispute. While the Commission has stated in the past that it will not require a demonstration of public interest benefit from BOC long distance entry,[27] the Commission should consider the potential harm to the interLATA voice and data markets caused by the entry of a firm with the ability to discriminate in the provisioning of access services essential to its competitors.

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25 *E.g.* 47 U.S.C. 272(c).

26 *New York 271 Order*, at ¶ 341.

27 *Id.* at ¶ 428.

Indeed, incumbent LECs possess "both the incentive and the ability to discriminate against competitors" in "all retail markets in which they participate."[28] Congress partially addressed this danger with sections 272(c) and (e) of the Telecommunications Act of 1996.[29] In 272(c), the Act prohibits BOC discrimination in favor of its affiliates, while 272(e)(1) specifically requires BOCs to "fulfill any requests from an unaffiliated entity" for either exchange service or exchange access "within a period no longer" than the time the BOC takes to provision that service or access to itself or its affiliates.[30] While Section 272(c)(2) requires that all transactions between the BOC and its affiliate be accounted for in accordance with the Commission's accounting safeguards, a critical gap remains in that there is no current requirement that BOCs report the provisioning of tariffed services such as special access between the BOC and its affiliates.

This lack of comparable data is significant because recent evidence indicates that Verizon's performance in providing special access services to competitors has remained below acceptable levels for over a year. The provisioning intervals observed by a CompTel member company, Cable & Wireless USA, Inc. ("C&W USA"), are illustrative.[31] The provisioning intervals for DS-1s to C&W USA in New York, for example, have exceeded 14-20 days, on

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28 *SBC Ameritech Merger Order* at ¶ 190. Verizon cannot demonstrate that it provides service in a nondiscriminatory manner absent performance measurements.

29 Codified at 47 U.S.C. 272 (hereinafter "the Act").

30 47 U.S.C. 272(e)(1).

31 CompTel is in the process of gathering relevant information about Verizon's special access performance, which it will present in an *ex parte* filing as soon as possible.

average, for over a year.[32] Similar problems have occurred in Massachusetts.[33] Unfortunately, these substantial delays appear to be both persistent and widespread.

Poor performance in this area affects all interLATA services, including internet access, high speed data and traditional long distance. Once given 271 authority, the BOC's affiliate will need the same high capacity loops and special access as CompTel's members, since it will be providing the same services and fighting for the same customers. Unfortunately, competitors are already feeling the effects of Verizon's failure to provision special access on a timely basis. While it may be that Verizon will resist the temptation to favor its own affiliates in the provisioning of services and access, there is simply no way to verify this, and likewise no way for Verizon to demonstrate that no such discrimination is occurring.

There is good reason to be concerned about this lack of data. In the short time period it has been authorized to provide long distance services in New York, Verizon has already demonstrated a propensity to engage in post-entry backsliding. Just two months after allowing Bell Atlantic-New York to enter into the long distance market, the Commission was forced to investigate widespread OSS failures affecting CLEC orders for UNEs. As a result of the investigation, the Commission entered into a consent decree calling for payments of up to $30 million, and implemented additional performance measurements.[34] In addition, serious questions have been raised about Bell Atlantic-New York's compliance with the nondiscrimination

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32 Provisioning intervals have ranged from an average of 12.6 days to 22.6 days over this period.

33 Provisioning intervals in Massachusetts increased from an average of 14 days in the February-April timeframe to 19.7 days in the May-June timeframe.

34 *See New York Telephone Company (d/b/a Bell Atlantic-New York), Consent Decree*, 15 FCC Rcd 5413 (2000).

obligations of Section 272.[35] The Commission should not sit by and wait until the inevitable complaints begin to surface concerning special access discrimination; instead, the Commission should act proactively to deter anti-competitive conduct.

The Commission and its staff should also have all available tools to ensure that competitors are receiving equal treatment. One simple but useful implement is the creation of several straightforward measures of Verizon's special access performance. One would hope that Verizon would support such measurements to remove any cloud of suspicion and ensure full compliance with Section 272 of the Act, just as it has agreed to the creation of metrics and incentives to ensure non-discriminatory performance in other areas.[36]

The Section 271 review process provides an appropriate setting in which to examine such incentives and take appropriate action. In fact, this is precisely the type of issue that cannot be resolved until a Section 271 review has reached the Commission, since the State Commissions do not address issues that are primarily interstate in nature.[37]

The Commission must require Verizon to satisfy performance measurements with regard to provisioning special access services to all customers, including its own Section 272 affiliate(s). Without performance measurements, there is no incentive for Verizon to provision special access services on a nondiscriminatory basis in compliance with Sections 251, 271 and

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35 *See AT&T Corp. v. New York Telephone Company (d/b/a Bell Atlantic-New York), Memorandum Opinion and Order*, FCC 00-362 (rel. Oct. 6, 2000). In their separate statements, Chairman Kennard and Commissioner Ness each recognized the need to examine nondiscrimination obligations in light of the changes in the marketplace.

36 *See BA-NY §271 Order*, ¶ 329, *et. seq.*

37 If the Commission does not address this deficiency by adopting the performance measures described below, it is respectfully submitted that the Commission should immediately create a separate proceeding to examine such issues and establish appropriate safeguards for use in all Section 271 reviews.

272 of the Act. Nor is there any mechanism for Verizon's access customers to determine whether they are receiving service on a nondiscriminatory basis.

Requiring Verizon to report its performance regarding the provisioning of special access services to its customers, including its own long distance affiliate, fills a gap in Verizon's existing reporting obligations. The Commission already requires Verizon, and any applicable affiliate, to provide performance reports regarding its provision of high speed special access services as well as regular special access services to Genuity, in the following areas: percent of commitments met; average interval; average delay days due to lack of facilities; average interval to repair service; and the trouble report rate.[38] Verizon must also satisfy performance measurements regarding its wholesale CLEC operations, in each of the five service domains: pre-ordering; ordering; provisioning; maintenance & repair, and billing.[39] There are no corresponding performance measurements, however, for access service.

The Commission should require Verizon to report its performance provisioning special access services to all of its customers, including its own Section 272 affiliate. These reports must contain sufficient detail for an access customer to be able to determine whether Verizon has provisioned service in a nondiscriminatory manner. At a minimum, Verizon must report its provisioning of special access services, on a disaggregated, company-specific basis, for each of the following measurements: percent of commitments met; average interval (in days); average delay days due to lack of facilities; average interval to repair service (in hours); and the

38 *Bell Atlantic/GTE Merger Order* at ¶ 330.

39 *See BA-NY §271 Order*, ¶ 329, *et. seq.*

trouble report rate.[40] Requiring these performance measurements will eliminate a critical gap in the existing performance assurance scheme.

V. VERIZON HAS FAILED TO PROVIDE COMPETING CARRIERS WITH INTERCONNECTION TRUNKING IN MASSACHUSETTS THAT IS EQUAL – IN-QUALITY TO ITS OWN RETAIL OPERATIONS

Section 271 applicants must provide "[i]nterconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)."[41] Section 251(c)(2) imposes a duty on incumbent LECs "to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . for the transmission and routing of telephone exchange service and exchange access."[42] This interconnection must be "at least equal in quality to that provided by the local exchange carrier to itself."[43] As explained in more detail below, Verizon has failed to demonstrate that, in Massachusetts, it provides interconnection that is equal in quality, on terms and conditions that are just, reasonable and nondiscriminatory in accordance with the requirements of section 271.

A. Verizon Has Been Unable To Adequately Provision Interconnection Trunks In Massachusetts.

Unlike in New York, Verizon has been unable to provision interconnection trunks in Massachusetts in the quantities forecasted and requested by competitive carriers, as the attached affidavit by Theodore X. Washington demonstrates. Mr. Washington is Manager of LEC Relations for CompTel member ICG Telecom Group, Inc. ("ICG"). The experience of ICG

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40 *Bell Atlantic/GTE Merger Order* at ¶ 330.

41 47 U.S.C. § 271(c)(2)(B)(i); *See Application of BellSouth Corporation for Provision of In-Region, Inter-LATA Services in Louisiana*, 13 FCC Rcd 20599, at 20640-42 (1998) *("Second BellSouth Louisiana Order); Ameritech Michigan Order*, 12 FCC Rcd at 20662-63.

42 47 U.S.C. § 251(c)(2)(A).

43 47 U.S.C. § 251(c)(2)(C).

provides documented confirmation that Verizon is not providing competing carriers with interconnection trunking in Massachusetts that is equal in quality to the interconnection that Verizon provides to its own retail operations as required by Section 251.

As Mr. Washington's Affidavit demonstrates, ICG provided Verizon with a forecast in November, 1999, for interconnection trunks to be installed in Massachusetts during the year 2000 in connection with ICG's service launch in Massachusetts. Three months later, Verizon notified ICG that it would not provision the forecasted trunk facilities. Rather, Verizon unilaterally committed to install only 39.3% of the interconnections trunks that ICG had requested for Boston. Worse yet, Verizon then failed to provide even the 39.3% that it had committed to install. Verizon's latest prediction is that it will not be able to install the 39.3% of the requested interconnection trunks until the end of March 2001 -- more than 16 months after ICG filed its forecast.

In August, 2000, ICG presented Verizon with an updated forecast for interconnection trunking, based on the trunking information that ICG's large contract customers had provided. ICG informed Verizon that the forecast was based on actual, not predicted, demand, and that at least 70% of these interconnection trunks must be installed before ICG can convert one major customer onto its network. Several months later, Verizon is still refusing to commit to provisioning even 70% of the requested interconnection trunks. This refusal has had the effect of preventing ICG from serving its contracted customer in Massachusetts.

In its latest proposal, Verizon has indicated that it will begin building an additional 2400 interconnection trunks beginning no earlier than April 2001. This volume of interconnection trunking would provide ICG with ***less than 50%*** of the interconnections trunking ICG requested in 2000, and even this limited volume would not be installed until the second and

third quarters of 2001. These facts demonstrate that Verizon has abused its control of the local exchange network to arbitrarily limit the volume of traffic that ICG's Boston network could bear. Verizon's delays in provisioning interconnection trunking have effectively impeded ICG's ability to serve its customers and have clearly inhibited competition. Until Verizon can demonstrate its ability to provision interconnection trunks as requested, it cannot satisfy Section 271's standards.

B. The FCC Should Accord Full Weight to Mr. Washington's Affidavit.

In its *Texas 271 Order*, the Commission articulated, with respect to some evidence, an evidentiary standard that was similar to the doctrine of exhaustion of administrative remedies.[44] While CompTel certainly agrees that particular evidence should be accorded less deference under certain circumstances, the FCC should accord full weight to Mr. Washington's Affidavit in order to promote administrative efficiency and the public interest.

Mr. Washington's Affidavit provides documented evidence of Verizon's failure to provide interconnection trunking as required by Sections 251 and 271. The Affidavit demonstrates that ICG has been attempting in good faith to enter the Massachusetts local exchange market for almost one year, and has been unsuccessful due solely to Verizon's delays in provisioning the interconnection trunks that ICG needs to enter the market. Given the timing of Verizon's trunking delays, ICG's participation in the Massachusetts proceeding would not have been meaningful at that time.

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[44] Texas 271 Order, ¶ 70, n.146. With respect to two affidavits CompTel submitted with its comments in the "Texas I" proceeding, the Commission concluded that "[i]nasmuch as the Texas Commission had little opportunity to investigate those complaints and develop a factual record, we accord them little weight."

To discount the evidence offered by ICG now would create a perverse incentive for parties to complain prematurely about BOC performance during state proceedings to merely preserve the right to participate in subsequent federal proceedings should the BOC ultimately fail to provide the requested interconnection trunking. Such a policy would also reward BOCs who manage, through poor performance, to exclude a competitor completely from the state under review. Accordingly, it would be unfair for the Commission to accord "less weight" to Mr. Washington's Affidavit simply because ICG did not participate in the Massachusetts 271 review proceeding.

According full weight to Mr. Washington's Affidavit is also consistent with the doctrine of exhaustion of administrative remedies, upon which the Commission seems to have modeled at least some of its evidentiary standards for Section 271 proceedings. The Supreme Court has held, for example, that if Congress has not clearly required exhaustion, sound discretion will govern,[45] and that the exhaustion doctrine should not be applied blindly in every case.[46] These holdings make clear that the exhaustion doctrine should not be applied mechanically, particularly where countervailing interests are at stake. As explained above, CompTel submits that nothing will be served by according Mr. Washington's Affidavit less weight under these circumstances. Therefore, CompTel urges the Commission to accord Mr. Washington's Affidavit full weight since it provides record evidence that Verizon has failed to meet the Section 271 standard, and was not withheld for strategic advantage.

[45] *McGee v. United States*, 402 U.S. 479 (1971), at 483, n. 6.

[46] *McKart v. United States*, 395 U.S. 185 (1969), at 201.

VI. CONCLUSION

For the foregoing reasons, the application of Verizon for Massachusetts should be dismissed. Should the Commission consider the application, it should not permit Verizon's superficial analogies to its New York performance mask the obstacles the company has placed in the way of competition in Massachusetts. Until such time as Verizon addresses these deficiencies identified herein by permanently lowering its UNE prices to TELRIC, by adopting reasonable performance metrics for its special access service and by demonstrating the ability to provision interconnection trunks on a timely basis, the Commission must deny Verizon Massachusetts' application.

Respectfully submitted,

COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

Dated: October 16, 2000

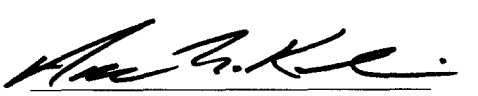
By: 

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Exhibit A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Application by Verizon New England, Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), and Verizon Global Networks, Inc., for Authorization to Provide In-region InterLATA Services in Massachusetts	)	CC Docket No. 00-176

AFFIDAVIT OF THEODORE X. WASHINGTON

STATE OF COLORADO)
)
COUNTY OF ARAPAHOE)

I, Theodore X. Washington, being of lawful age and duly sworn upon my oath, do hereby depose and state as follows:

1. My name is Theodore Washington. My business address is 161 Inverness Dr. West Englewood, Colorado 80112. I am Manager of LEC Relations for ICG Telecom Group, Inc. ("ICG"). In this position, I am responsible for interfacing with incumbent local exchange carriers regarding all operational issues.

PROFESSIONAL EXPERIENCE AND EDUCATIONAL BACKGROUND

2. I joined ICG in July 2000. Previously, I was employed by US West (now Qwest) where I was Manager, Root Cause Analysis for the design services organization. In that capacity, I was responsible for analyzing provisioning and repair missed commitments. Additionally, I served as a Process Analyst for unbundled loops. In that role, I was responsible for reviewing the ILEC's service with respect to its CLEC wholesale customers. I was responsible for the development and presentation of training information concerning US West's regulatory obligation to provide unbundled loops.

3. I hold a MBA in Management of Engineering Technology. I received my Bachelor of Science degree in Chemistry.

4. **DESCRIPTION OF ICG TELECOM GROUP, INC.**

5. ICG Telecom Group, Inc. ("ICG") is a national facilities-based carrier. The company provides a variety of communication services. In Massachusetts, we have a switch installed in Boston.

SUMMARY

6. By failing to provide our company the interconnection trunks required to meet our customer commitments, Verizon has significantly impeded ICG's ability to enter the Boston market. In November 1999, ICG provided a forecast to Verizon for interconnection trunks to be installed during the first through the fourth quarters of 2000 in Massachusetts, New York and Washington, D.C. Three months later, Verizon notified ICG that they would not provision the requested trunking facilities. For Boston, Verizon "committed" to install only 39.3% of the trunks ICG requested. By arbitrarily reducing the number of provisioned trunks by more than 50%, Verizon unilaterally decided how much traffic ICG's Boston network could bear. Verizon's failure to honor our forecast has prevented ICG from serving certain large customers whose traffic volumes require that a complete network, built to our original forecast, be established prior to converting their traffic to ICG. Moreover, as of October 2000, Verizon has failed to install even the significantly reduced number of trunks to which it had "committed." Verizon's latest prediction to ICG is that the 39.3% of our forecast (that Verizon has chosen to provision) will not be completed until the end of March 2001.

7. Finally, ICG presented to Verizon in August 2000 an updated forecast based on the trunking information provided to ICG by its large, contract customers. In spite of numerous meetings

with Verizon in which ICG has indicated to Verizon that we must have at minimum 70% of the number of forecasted trunks installed before we can convert at least one major customer onto our network. Verizon still is refusing to commit to provisioning even 70% of the requested number of trunks.

8. In addition to Verizon's refusal to provision the full complement of interconnection trunks and the yearlong delay, Verizon also failed to meet its commitment regarding the installation of entrance facilities. ICG contracted with Verizon for a fiber build at each of the ICG switch sites located in Boston, New York and Vienna. The expected due date was December 1, 1999. Verizon in fact failed to order the necessarily equipment until mid January 2000. The Boston entrance facilities were not turned up until May 5th, 2000, after the issue was elevated to the President level at both Verizon and ICG. This date was five months past the original due date.

FORECAST ISSUES

9. ICG presented its original interconnection trunk forecasts to Verizon on October 18th and 25th 1999. The two companies subsequently held a meeting on November 8, 1999 to discuss the Boston switch project. ICG was asked to make technical corrections relating to specified tandems and associated end offices. These corrections were finalized in a forecast for Boston that was presented to Verizon on January 25, 2000. The final forecast for Boston appears below:

BOSTON	1ST QUARTER	2ND QUARTER	3RD QUARTER	4TH QUARTER
TOTAL DSOs	10648	15528	20304	24240

Note: The increase in the number of requested DSOs by quarter reflects the total cumulative trunk volumes needed by the end of each quarter. Boston required approximately 5,000 additional trunks per quarter.

10. Following a January, 2000 meeting, ICG, in an effort to ease Verizon's provisioning problems, agreed to an initial installation process that would provision a maximum of 672 trunks per tandem. Although ICG agreed to this initial provisioning plan, we reiterated to Verizon that we would need the full number of forecasted trunks ultimately to be provisioned within the requested timeframe outlined in our forecast.

11. On February 15, 2000, ICG received an email from Verizon that stated that Verizon would only provision 9527 trunks in Boston. This quantity represents only 39.3% of ICG's forecast. (Verizon later reduced the quantity of trunks they would turn up for ICG in New York as well; the incumbent LEC ultimately stated they would provision only 30.1% of the trunks requested in ICG's New York forecast.)

12. In spite of our company's repeated requests to Verizon to provision the necessary trunks specified in our forecast, Verizon refused. Our access to interconnection trunks has been limited to the quantity that Verizon arbitrarily determined. ICG has made every effort to explain to Verizon that we have large, contract customers whose traffic volumes require the requested number of trunks in order to meet industry standard engineering practices. Furthermore, ICG is under service standard obligations to these customers and can not risk jeopardizing these obligations by having the customers' traffic encounter blockage. In other words, ICG's forecast was not drawn up based on fantasy predictions from a starry-eyed marketing department. Our forecast was based on known customer trunking volumes and

standard PO 1 grade of service engineering standards. In spite of ICG's statements to this effect, Verizon deliberately and willfully refused to provision the necessary trunks.

13. Additionally, Verizon refuses to provide to ICG another industry standard network configuration, diverse paths to the tandem. Network diversity is critical in order to ensure that a carrier's network does not have single point of failure. Although all other ILECs have adhered to the industry network diversity standard by allowing ICG to have diverse paths to the tandem, Verizon has refused to comply with this basic network standard. Consequently, Verizon has placed ICG's ability to reliably serve its customers in a precarious position. By refusing to provide standard network diversity, Verizon has disadvantaged ICG to a significant degree since our entire ability to reliably serve customers is subject to a single point of failure. Verizon's own network is not configured in this precarious manner. Depriving a CLEC of the ability to have diverse routing in essence risks the network reliability of a competitor.

14. Furthermore, as of October 2000 Verizon in fact has failed to provision the 9527 trunks that it claimed it would deliver to ICG. On September 22, 2000, Verizon's email to ICG stated that of the remaining 5 DS3s two would be turned up in December 2000 while two would not be turned up until February 2001; the final DS3 was not mentioned by Verizon. In a meeting held the week of October 6, 2000, Verizon revised its due dates; it now claims that all five remaining 5 DS3s would be turned up by the end of December 2000. However the associated trunks would not be turned up until the end of March 2001.

15. ICG and Verizon have agreed to install one-way trunks. Consequently, in order to fully turn up service and receive incoming traffic destined to its customers, ICG must receive ASRs from Verizon for trunks inbound to ICG. Once the ASRs are issued by Verizon, ICG sends a

Firm Order Commitment ("FOC"). Verizon then must complete the process by turning up their trunks, which will carry traffic inbound to ICG. Until Verizon turns up these trunks, ICG can not receive the inbound traffic its customers anticipate. If this process is delayed, a carrier cannot compete in the market.

16. Verizon not only slashed ICG trunking requests to an arbitrary quantity it also then failed to provision that quantity in a reasonable manner. At the end of 2000, a year after presenting its forecast to Verizon, ICG will have less than 7,500 (31%) of the 24240 trunks specified in ICG's 4th quarter requirement. Verizon's withholding of critical interconnection facilities without a doubt has blocked ICG's effective entry into the Boston market for more than a year.

17. Additionally, ICG presented to Verizon an updated forecast for Boston on August 30, 2000. Verizon recently has stated that it will take six months to implement a forecast. Considering the horrendous performance by Verizon during this past year on implementing our original forecast, we have no reasonable expectation that Verizon actually will provision to any forecast within a six-month timeframe. During a meeting on October 6, 2000, Verizon itself could not reconcile its claims that it takes six months to build to a forecast with its demonstrated track record with ICG during the past year.

18. In an e-mail sent on October 12th, 2000, Verizon has proposed to begin building only an additional 2400 trunks, starting, at earliest, in April 2001. This trunk volume, which would not be installed until 2nd and 3rd quarter of 2001, would provide ICG **with less than 50% of its 2000** forecast numbers, assuming Verizon in fact actually completes building out these proposed trunks in year 2001. Unfortunately, at this time, ICG has a high degree of doubt concerning Verizon's willingness to meet any trunk installation due dates. As stated

previously, Verizon previously has not met even its own so-called trunking "commitment" timeframe. Verizon's delays in turning up the necessary inbound trunks has effectively impeded ICG's ability to serve its customers.

FACILITIES ISSUE

19. ICG contracted with Verizon to perform a fiber build at each of the ICG switch sites in Boston, New York and Vienna. The expected due date for each of the sites was approximately December 1, 1999. On January 10, 2000, Verizon engineers notified ICG that Verizon had not ordered the necessary equipment. ICG notified its Verizon account manager of this notification. The account manager verified that ICG had properly completed the work order for Verizon's field operations. We then requested that our account manager confirm the status of the equipment order.

20. Having not received a confirmation from our account manager by January 18, we were forced to escalate the issue. None of ICG's calls to our account manager or her supervisors were returned. It was not until January 25th that ICG was able to confirm that Verizon finally had ordered the equipment. Verizon then indicated that the due date would be pushed forward until March 15, 2000.

21. By March 14, it was determined that the fiber and transport equipment was at the Boston site. However, Verizon pushed out the due date for one additional month until April 13, 2000 without providing an explanation. ICG was not given an option to improve the date. After repeated escalations, the fiber finally was turned up on approximately May 5, 2000, five months after the original due date.

CONCLUSION

Fully cognizant that it controls essential facilities, Verizon has deliberately blocked ICG from entering the Boston market. If an ILEC unilaterally is allowed to ignore a CLEC's trunk forecast, it consequently is allowed to effectively obstruct competition. An ILEC's unwillingness to provision necessary trunks strikes a fundamental blow to competition. Verizon understood that providing the required trunks to ICG ultimately would allow a competitor to move from Verizon substantial traffic volumes generated from key, major customers. Verizon acted accordingly by impeding, delaying and effectively negating ICG's ability to compete. Verizon has not demonstrated that it has opened the Massachusetts market to competitors. It has demonstrated only that it can efficiently and effectively keep those doors closed to competition.

This concludes my affidavit.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on October 13, 2000.

Theodore X. Washington
Manager, LEC Relations
ICG Telecom Group, Inc.

State of Colorado }
} ss.
County of Arapahoe }

Subscribed and sworn to before me this 13th day of October, 2000, by Theodore X. Washington.

Witness my hand and official seal.

My Commission expires: 3/3/2003

Notary Public

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of October, 2000, I served copies of Comments of the Competitive Telecommunications Associations by hand and first class mail, U.S. postage prepaid, on the following:

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***VIA HAND DELIVERY**

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